

Clean Water Fee Structure And Improved Clean Water Services

Report to the General Assembly
Pursuant to House Bill 89 (2011)

Sara Parker Pauley, Director
Department of Natural Resources

December 31, 2012



Table of Contents

Executive Summary	3
Overview of Missouri’s Clean Water Activities.....	3
Types of Permits.....	4
Integration of Permitting, Inspection and Enforcement Activities	4
Monitoring.....	5
Background of Current Stakeholder Effort.....	5
Stakeholder Meetings	5
Clean Water Budget	6
Clean Water Program Improvements.....	6
Provisions for Expedited Permits	6
Other Improved Services.....	8
Conclusion	8

Executive Summary

Section 644.054 calls for the Missouri Department of Natural Resources (hereinafter “the department”) to conduct a comprehensive review of the fee-structure related activities undertaken to implement the Missouri Clean Water Law and the federal Clean Water Act.

The department used a series of large and small stakeholder meetings over the course of the last year to review the current clean water fee structure and identify areas for clean water activity efficiency improvements. The department acknowledges the efforts of stakeholders through this process, especially the following who represented their sectors: Robert Brundage (Newman, Comley and Ruth, PC representing the Missouri Pork Association and Missouri Agribusiness Association), David Casaletto (Ozarks Water Watch Foundation/Ozarks Clean Water Company), Floyd Gilzow (Missouri Public Utilities Alliance), Phil Walsack (Missouri Public Utilities Alliance), Leslie Holloway (Missouri Farm Bureau), Roger Walker (REGFORM), Kevin Perry (REGFORM), Emily Schwartze Post (Home Builders Association of St. Louis and Eastern Missouri), and Trent Stober (Geosyntec).

Overview of Missouri’s Clean Water Activities

With the passage of the Missouri Clean Water Law in 1972 and 1973, Missouri accepted the authority to implement the federal Clean Water Act in the state from the U.S. Environmental Protection Agency. The acceptance of this delegation of responsibility for water quality is consistent with the department’s mission to protect, maintain and enhance Missouri’s natural, cultural and energy resources. This agreement between the U.S. EPA and the department is established in a memorandum of agreement under which Missouri assumes all of the relevant responsibilities of implementing the federal clean water requirements. The most visible aspects of these duties are permitting, inspection and enforcement, as these involve direct interactions between the department and the regulated community.

The department’s responsibilities also include water quality monitoring and analysis, technical assistance and education. Responsibilities have been added over time due to changes in federal clean water law. The most significant additions have been related to stormwater management through permitting and the nonpoint source management effort.

While not part of the delegated program itself, the department also provides financial assistance for construction of wastewater infrastructure projects at publicly-owned treatment works. This has been a popular and beneficial program and has worked well in helping communities keep up with infrastructure needs and comply with new pollution control requirements. Because the categories of activities supported by the fee revenue are generally permitting, inspection and enforcement activities, the following paragraphs explain these activities in more detail.

Types of Permits

Permitting is central to the state's obligations under the federal Clean Water Act. Therefore, it is important to understand the two different types of permits issued by the department: construction permits and operating permits.

Construction permits involve the applicant submitting engineering plans prior to construction. The department reviews these plans to ensure they comport with the state's design requirements. The department also issues operating permits pursuant to the Missouri Clean Water Law (Missouri State Operating Permits). These permits are the equivalent of the federal National Pollutant Discharge Elimination System or NPDES permit, which is required pursuant to the federal Clean Water Act. Therefore, the Missouri State Operating Permits fulfill the state's obligation for permits required by the federal Clean Water Act.

Operating permits are categorized as either site-specific permits or general permits. Site-specific permits are crafted specifically for an individual facility, such as a municipal wastewater treatment plant. General permits, in contrast, are developed for a number of facilities in a particular business sector, such as small Concentrated Animal Feeding Operations (CAFOs) or limestone quarries. Since general permits cover discharges in a large variety of settings, they contain requirements that will be protective of water quality wherever they may be used, and therefore may contain more restrictive limits than may be available in permits written for site-specific characteristics. The department is able to craft general permits when a particular industry sector has uniform processes and discharges across the industry sector in question. Some examples of industry sectors for which the department has general permits include: car washes, limestone quarries, and land disturbance activities.

Integration of Permitting, Inspection and Enforcement Activities

In order to maintain a viable program that meets the expectations of our delegation agreement with the U. S. EPA, the department must ensure the permits it issues are in compliance with the law, and DNR must have a robust program to ensure permittees comply with permits. There are numerous activities required to make sure this happens. Although not an all-inclusive list, the following are some examples of necessary activities:

Pre-permit and Permit Issuance:

- Pre-application meetings or conferences to review site specific conditions that may affect permitting;
- Exchange of information necessary to craft appropriate permit conditions;
- Preparation of draft permit;
- Applicant pre-review of draft permit;
- Public notice and comment;
- Review and response to comments from the permit applicant and interested third parties; and,
- Issuance of final permit.

The department, as well as many regulated entities, have found that the pre-review and exchange of information process has been instrumental in working out potential issues and in avoiding unnecessary appeals. This saves time and money for the department and the applicant.

Post-permit activities include inspections, data review, compliance and technical assistance. Most permits include reporting requirements and the department reviews the discharge monitoring reports submitted to ensure the permittee is in compliance. The department conducts compliance assistance visits and inspections to make sure the operation is working properly or, if not, help the permittee make the necessary changes to achieve compliance. The department also must respond to concerns about any operation alleged to be causing pollution. While only a small portion of operations experience formal enforcement action, preventing pollution is an essential part of the department's responsibilities. Moreover, it is necessary to ensure equity for compliance among businesses and to ensure Missouri's water resources are protected.

Monitoring

Water quality monitoring is important to clean water efforts in a number of ways, from tracking trends and identifying problems, to educating Missouri's citizenry on natural resources and supporting the many essential uses of water. Monitoring allows the department to tailor permit conditions to the unique conditions of the waterbody that will receive the discharge. This site-specific monitoring may allow less extensive wastewater treatment to achieve the required water quality in the receiving stream. Water quality monitoring often benefits permit applicants by using site-specific data to determine effluent limits that would otherwise be based on protective assumptions. Monitoring also provides the evidence of water quality improvement where efforts have been made to address impairments. As there are impairments across the state from many sources, addressing them and documenting the restoration of water achieving standards can be a major accomplishment that makes the water suitable for use.

Background of Current Stakeholder Effort

The department established a web page and an e-mail list dedicated to providing information about Clean Water Fees in support of the stakeholder process. Stakeholders, members of the public and any other interested parties were able to sign up for the e-mail list. The department used the Clean Water Fees web page to post agendas, presentations, and handouts from the large stakeholder meetings. The web page also includes a Frequently Asked Questions section and an e-mail form that automatically submits questions regarding the web page or Clean Water fees directly to department staff. The Clean Water Fees web page can be found at: <http://www.dnr.mo.gov/env/wpp/cw-fees.htm>.

Stakeholder Meetings

The department hosted a series of seven large formal meetings that included open discussions between the stakeholders and department staff, and a compilation of stakeholder desires and opportunities for improving efficiency and effectiveness. These meetings were open to the public and streamed live over the Internet.

In addition to these major meetings, the department convened several smaller, ad hoc groups to discuss sector-specific interests in clean water fees, policy, permit streamlining, as well as the current fee structure.

Clean Water Budget

There are more than 20 fund sources for clean water activities including federal grants, clean water permit fees (which were first adopted in 1992 (SB 582)), Clean Water State Revolving Fund administrative fees and general revenue.

Clean Water Program Improvements

Provisions for Expedited Permits

Stakeholder interest in expedited permits centers on construction permits and initial operating permits because these permits are necessary for applicants to begin operating their facilities. Stakeholders provided a variety of suggestions for an expedited permit program. The department is reviewing requirements for construction permitting and is committed to examining ways to expedite construction permits that will continue to be required. Some states have established separate, parallel frameworks for processing permits in an expedited manner and the department is considering these models. The goals of an expedited permitting program include:

- The ability of applicants to fast-track their applications without causing an appreciable delay in non-expedited applications.
- The ability of applicants to estimate the time frame and cost for an application upon entry into the process.

The most direct way to expedite site-specific permits includes the following steps:

- Establish team of technical staff to complete work on the permit.
- Meet with applicant to establish schedule and cost expectations.
- Receive a complete and well-documented application with supporting technical information.
- Maintain contact between staff and applicant as needed, and quickly evaluate issues needing resolution.
- Issue or deny permit.

Section 644.051, RSMo requires the department to issue or deny permits within specified timelines. This section also prescribes refunds if a permit decision is not reached by the deadline. The department reports to the Clean Water Commission on permit timeline performance as required. The Clean Water Commission adopted rules on timelines, and these reflect the statutory time frames. Most permit decisions are reached before the permit deadline. Newly implemented and future efficiencies and expedited permit processes, as described below, will help the department maintain and improve permit timeliness.

Several steps have been completed or are underway to expedite permit issuance in general:

- ePermitting - An on-line system for general land disturbance permits was implemented in June 2012. These permits make up approximately 44% of all clean water permits. Formerly, the department used a paper application process that involved several staff and typically took several days. Using ePermitting, an applicant can obtain a general land disturbance permit in a matter of minutes. The department is now examining other permits which can be incorporated into ePermitting.
- Permit Centralization - The issuance of site-specific permits was centralized within the department's Water Pollution Control Branch in Jefferson City. Previously, site-specific permits were issued through the department's five regional offices and the Water Pollution Control Branch. General permit issuance will be centralized as well. Not only has this led to faster permit issuance timelines, but has also improved consistency, as drafting and issuing of permits takes place under one process and under one review scheme.
- Process Review and Improvements - The department began a review of activities required to obtain permits. Some activities that may be excluded from the requirement to obtain a construction permit include: those that can be administered by local approved programs (sewer extensions); those with minor changes such as sewer replacement or addition of equipment to improve treatment of the existing flow; and private facilities willing to assume complete responsibility for design and performance. These changes will be reflected in rule amendments to Clean Water Commission rule 10 CSR 20-6.010, which are currently underway. Similarly, some permits, such as sewer extension permits, may be administered through a notification process, and this too will be considered in the rule amendments.
- Eliminate Redundant Public Notice – The department can reduce the number of permits required to go through the public participation process in cases where the permit limits are not changing. Where operating permits require additional treatment and the final limits related to that treatment have already been through the public participation process, any construction permits can be processed without additional public participation. This will reduce the time needed for processing these permits by about two months.

As described above the department is also reviewing requirements for construction permits across several sectors. The department could also allow construction to begin before the issuance of a construction permit (in situations where construction permits are still required), provided the permit applicant understands and agrees that the applicant bears the entire burden of compliance, including correction of any facility that does not meet the final approved design. Stakeholder discussions on construction permitting requirements are ongoing and the department looks forward to cooperatively working with interested parties to reduce burdensome and time-intensive requirements while maintaining provisions necessary to protect public health and the environment.

The department is committed to finding ways to expedite permits. Prompt permit actions are important to those making business decisions. The department strives to make environmental protection requirements and processes as timely, transparent and predictable as possible, and our goal is to assist the advancement of economic opportunities as quickly as possible with the necessary environmental protections.

Other Improved Services

The department continues to examine ways to provide better services to our permittees and the public. Two on-going endeavors focus on small facilities and implementation of electronic reporting for permittees.

The department has convened a task force to examine the challenges of small facilities in greater detail and offer recommendations for targeted technical assistance. In this forum the department is searching for ways to assist small systems as they strive to meet water quality requirements using new technology, applying new techniques to older technology, or minimizing water quality requirements by moving to no-discharge systems.

The next major information technology project for clean water permittees will be a new electronic discharge monitoring report system. This on-line system will allow permitted facilities to file required reports electronically, saving time and money while reducing errors inherent in the present paper-based system. This system is expected to be available online by spring 2013, and users will be phased in over time.

Conclusion

The availability of high-quality water resources for agriculture, industry, boating, fishing, and drinking water are critically important to Missouri's economy and quality of life. Supporting the efforts that achieve, improve and maintain water quality is an essential task that is best carried out by the state.

In conclusion, throughout this process stakeholders voiced support for the state of Missouri retaining delegation to conduct clean water activities, as opposed to allowing the U.S. EPA to be the lead agency.

The department appreciates the opportunity to share information and analyze Missouri's clean water activities and funding structure with our stakeholders and respectfully submits this report on December 31, 2012 to the 96th Missouri General Assembly.